

# Board of Adjustment



## *Minutes*

City Council Chambers, Lower Level  
February 8, 2011

**Board Members Present:**

Garrett McCray, Chair  
Diane von Borstel  
Greg Hitchens  
Tyler Stradling  
Cameron Jones  
Danette Harris

**Board Members Absent:**

Nicholas Labadie - excused

**Others Present:**

Harry Walther  
David Fabiano  
Hector Tapia

**Staff Present:**

Gordon Sheffield  
Tom Ellsworth  
Mia Lozano-Helland  
Lesley Davis  
Wahid Alam

The study session began at 4:35 p.m. The Public Hearing meeting began at 5:35 p.m. Before adjournment at 6:00 p.m., the following items were considered and recorded.

**Study Session began at 4:35 p.m.**

- A. Medical Marijuana – Mr. Sheffield provided the Board with the latest on the regulations for medical marijuana. He stated that Mesa City Council adopted the ordinance at the recent February 7, 2011 council meeting that allows medical marijuana dispensary, cultivation, and infusion facilities in the M-1 and M-2 districts subject to compliance with specific use standards and separations from various other land uses.
- B. Zoning Code Update – Mr. Sheffield updated the Board on the present status of the update. He explained that there have been some delays, but there will be public hearings on February 16th and March 23<sup>rd</sup> for public comments.
- C. The items scheduled for the Board's Public Hearing were discussed.

**Public Hearing 5:35 p.m.**

- A. Consider Minutes from the January 11, 2010 Meeting A motion was made to approve the minutes with a minor edit by Boardmember Hitchens and seconded by Boardmember Jones. Vote: Passed 6-0
- B. Consent Agenda A motion to approve the consent agenda as read was made by Boardmember Jones and seconded by Boardmember Stradling. Vote: Passed 6-0

**Board of Adjustment Meeting  
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**Case No.:** BA10-070

**Location:** 2262 South Orange

**Subject:** Requesting a Variance to allow a shade structure to encroach into the required side yard in the R1-6 zoning district. (PLN2010-00341) **Continued from the December 14, 2010 meeting**

**Decision:** Approval with conditions

**Summary:** David Fabiano explained the circumstances related to the shade structure he constructed without a building permit. He explained that he had advised his neighbors of the plans, but due to a misunderstanding of the project, his neighbor was unhappy with the final location of the structure. Mr. Fabiano provided the Board with his plan to bring the structure into compliance with the side yard setback.

Harry Walther, 2256 S. Orange owns the property adjacent to the east and stated that he objected and that he wanted the structure to be in compliance with the required side yard setbacks.

Boardmember Hitchens explained to Mr. Walther about the required setback and the allowable encroachment. He further stated that Mr. Fabiano's changes to the structure would bring it into compliance with the side yard setback requirements. Mr. Walther asked if the site plan submitted was in conformance he would no longer object. Mr. Walther further asked when the structure would be brought into compliance. Chair McCray explained to him that 90 days is typically allowed so that the applicant has time to obtain building permits and inspections.

**Motion:** It was moved by Boardmember Hitchens, seconded by Boardmember Harris to approve case BA10-070 with the following conditions

1. *Compliance with the site plan submitted*
2. *Applicant is to complete structure modifications within 90-days of this approval.*
3. *Compliance with all requirements of the Building Safety division with regard to the issuance of building permits.*

**Vote:** Passed 6-0

**Findings:**

**1.1** This variance was approved to allow a portion of a 544 square foot shade structure to encroach into the 15-foot rear setback for an open patio structure on the subject parcel. A corner of the patio structure encroaches 2.75-feet into the required setback. The shade structure has already been constructed and currently meets the rear setback requirement, but encroaches 5-feet into the required 5-foot side yard setback. The applicant will relocate the structure so that it meets the minimum 5-foot side yard setback and more closely complies with all setback requirements.

**1.2** The subject site is Lot 280 of the Hunters Ridge subdivision. This subdivision requires 5 and 10-

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foot side yard setbacks and 20-foot front and rear yard setbacks. An open patio structure is permitted to encroach 5-feet into that 20-foot rear yard setback, which creates a 15-foot rear yard setback for open patios. The subject property is pie-shaped and the house sits at an angle on the lot. Due to the way the house is sited on the lot, the area for the shade structure is separated from the primary yard area with the pool, which is northwest of the home.

- 1.3** The shade structure is the subject of a Code Compliance Case (COD2010-0391), for construction without benefit of a building permit.
- 1.4** The subject parcel is of larger size (12,406 s.f.) than other parcels in the area and exceeds the minimum required size for lots in the R1-6 zoning district (6,000 s.f.).
- 1.5** The R1-6 Zoning District allows up to 40% roof area coverage. The roof area of the primary dwelling and the roof area of the detached accessory building will not exceed the allowed roof area on the lot.
- 1.6** The applicant notified property owners within a 150-foot of the subject site. Early in the process there was a concern raised by the property owner to the east regarding the existing structure encroaching into the 5-foot side yard setback. The applicant made extensive efforts to work with that neighbor and address their concern. The applicant revised the initial request to accommodate the concern from his neighbor. The location for the shade structure along the east property line is 5-feet to the post, with a 1-foot overhang, which moves the structure further into the rear yard setback (north). The Zoning Code does allow a structure to be constructed with the supporting posts at 5-feet with a 3-foot overhang into the 5-foot setback. Staff did not receive calls from any of the neighbors regarding the revised request.
- 1.7** Unique circumstances existed with this lot that was pre-existing and not self-imposed; it has five sides and is located at a bend in the road. The home was constructed by a previous property owner or builder at an angle to face the road. The angled placement of the home minimized the rear yard area on the northeast side of the lot. Also, the applicant intends to park under the shade structure, therefore siting it on the garage side of the home, where there is an existing drive was logical.
- 1.8** Strict compliance with the Code in requiring the property owner to adhere to the 15-foot rear setback for an open patio structure would deprive the property of privileges enjoyed by other properties in the same zoning district. In this case, even though the lot is twice the size of the lots within the subdivision and the R1-6 zoning district, the shape of the lot, the placement of the existing home, existing garage and driveway location dictated the location of the detached building.
- 1.9** The variance does not constitute a special privilege unavailable to other properties in the vicinity and zoning district of the subject property.

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**Case No.:** BA10-071

**Location:** 2050 West Dixon Street

**Subject:** Requesting a Variance to allow an existing carport to be converted into a garage encroaching into the required side yard in the R-2 PAD zoning district. (PLN2010-00345)

**Decision:** Continued to the March 8, 2011 meeting.

**Summary:** This case was on the consent agenda and not discussed on an individual basis.

**Motion:** It was moved by Boardmember Jones, seconded by Boardmember Stradling to continue case BA10-071 to the March 8, 2011 meeting.

**Vote:** Passed 6-0

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**Case No.:** BA11-009

**Location:** 25 North Extension Road

**Subject:** Requesting a Special Use Permit (SUP) to allow a Commercial Communication Tower in the C-3 zoning district. (PLN2010-00405)

**Decision:** Continued to the March 8, 2011 meeting.

**Summary:** The continuance was granted to allow the applicant additional time to pursue alternate locations that would still meet their coverage requirements.

**Motion:** It was moved by Boardmember von Borstel, seconded by Boardmember Jones to continue case BA11-009 to the March 8, 2011 meeting.

**Vote:** Passed 6-0

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**Board of Adjustment Meeting  
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**Case No.:** BA11-010

**Location:** 1926 South Crismon Road

**Subject:** Requesting a modification of a Special Use Permit for a Commercial Communication Tower in the C-2 zoning district. PLN2010-00308

**Decision:** Continued to the March 8<sup>th</sup>, 2011 meeting.

**Summary:** This case was on the consent agenda and not discussed on an individual basis.

**Motion:** It was moved by Boardmember Jones, seconded by Boardmember Stradling to continue case BA11-010 to the March 8<sup>th</sup>, 2011 meeting.

**Vote:** Passed 6-0

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**Board of Adjustment Meeting  
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**Case No.:** BA11-011

**Location:** 1457 West Southern Avenue

**Subject:** Requesting a modification of a Special Use Permit for a Comprehensive Sign Plan in the C-2 zoning district. (PLN2011-00013)

**Decision:** Approved with conditions

**Summary:** This case was on the consent agenda and not discussed on an individual basis.

**Motion:** It was moved by Boardmember Jones, seconded by Boardmember Stradling to approve case BA11-011 with the following conditions:

1. *Compliance with the site plan submitted except as modified by the conditions below.*
2. *Compliance with all conditions of BA80-55 and BA93-28 except as modified by this request.*
3. *Replacement of any of the three existing signs on the interior ring road for Fiesta Mall require compatibility with the design approved for the signs along Southern Avenue. Size is not to exceed 32 square-feet in area of 6-feet in height.*
4. *Compliance with all requirements of the Building Safety Division with regard to the issuance of building permits.*

**Vote:** Passed 6-0

**Findings:**

- 1.1** In 1980 a CSP was approved for this shopping center as well as all of the peripheral sites at Fiesta Mall that restricted the number and size of monument signs based on the square footage that was allotted for attached signs on the Fiesta Mall major anchors. Restrictions were also placed on the amount of attached signage allowed for the peripheral properties. In 1993 a modification to that CSP was approved to allow attached signage to comply with the minimum code standard of 2 square-feet of sign area for each front foot of suite frontage with a maximum of 160 square-feet; however what was allowable for monument signage was not modified as part of that case.
- 1.2** The shopping center on the southeast corner of Longmore and Southern Avenue consists of 4 retail buildings. There are 2 monument signs along Southern Avenue and 3 signs on the interior ring road. The primary sign is located at the main entrance off of Southern Avenue with another sign in front to the easternmost building, which once served a bank that occupied that building. The new signs are in the same locations as the existing signs, except that they will be relocated slightly back to avoid an existing easement on the property.
- 1.3** The shopping center modified the comprehensive sign plan to allow signs in excess of the allowances specified in the plan. Per section 11-19-6(E)2(c) of the Ordinance, Group C-O-I developments, displaying more than one detached sign per street frontage shall be permitted 50 percent of total aggregate sign area and sign height. No sign shall exceed 80 square feet in area or 12-feet in height. Based on this formula, the Southern Avenue frontage would allow an

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aggregate height of 34-feet in height and area of 340 square-feet. The signs utilize 24-feet in height and 150 square-feet of the area.

- 1.4** There are also three existing signs on the interior ring road for the mall. There is one for the building that was utilized as a bank and two for the remaining three buildings in the retail center. The applicant did not provide a new sign design for those signs. Staff supports a reduced version of the design that is in compliance with the existing maximum size of 32 square-feet in area and 6-feet in height.
- 1.5** The design of the existing signage was dated and in poor condition. The existing primary entrance sign along Southern Avenue exceeds the size permitted by the existing CSP. The new signs are well designed and tie into the colors and materials on the building. The additional sign area and height are within the parameters established by the Zoning Ordinance for group C-O-I developments.

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**D. Other Business:**

None

Respectfully submitted,

Gordon Sheffield, AICP  
Zoning Administrator

Minutes written by Mia Lozano, Planning Assistant

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